Silver Court Nursing Center, Inc. and Health Care Services Group, Inc. *and* District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO

Silver Court Nursing Center, Inc., Silver Care Management, Inc., and FDS, Inc. *and* District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO. Cases 4–CA—19613, 4–CA–19724, 4–CA–19752, 4–CA–19809, and 4–CA–19838 Cases 4–CA–20372, 4–CA–20470, 4–CA–20486, 4–CA–20519, 4–CA–2054, and 4–CA–20603

April 28, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On May 7, 1993, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The General Counsel filed an exception. The Charging Party filed exceptions with a supporting brief,[1] a reply brief, and an answering brief. The Respondent filed an answering brief, cross-exceptions with a supporting brief, and a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record[2] in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[3] and conclusions and to adopt the recommended Order, as modified.[4]

[1] The Respondent moved to strike portions of the Charging Party's brief. The motion is denied.

[2] The Charging Party has moved to reopen the record to take additional evidence based on affidavits indicating significant interchange of employees and common day-to-day supervision between the Nursing Center and the Pavilion, which, it contends, would require a different result in this case. The motion is denied. Sec. 102.48(d)1) of the Board's Rules, requires ''extraordinary circumstances,'' ''newly discovered evidence'' that was not previously available and would ''require a different result.'' The Charging Party has failed to make this showing.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent contends that the judge was biased and lacked judicial temperament, which accounted for a number of findings which the judge made adversely to the Respondent, including his failure to grant the Respondent's motion for a directed verdict. We find no merit in the Respondent's contention. The Respondent's further request to strike the remainder of the record, and to bar the judge from any further participation in this case, is denied.

[4] The General Counsel requests the Board to correct the judge's recommended Order stating that ''The complaint is dismissed.'' The judge correctly found that the sole issue before him was whether the employees at the Alzheimer Pavilion should be accreted to the bargaining unit in this 8(a)(5) and (1) proceeding. The other unfair labor practices had been settled by the parties through formal and informal settlements. After the settlements, only a few paragraphs of the complaint relating to Case 4–CA–20470 remained. We shall modify the recommended Order to dismiss only those complaint paragraphs presented to the judge for decision.

ORDER

Paragraph 21 of the consolidated complaint issued on May 29, 1992 in Cases 4–CA–20470, 4–CA–2048, 4–CA–20519, 4–CA–2054, and 4–CA–20603, and paragraph 33 of the complaint to the extent it refers to paragraph 21, are dismissed.

Scott C. Thompson, Esq. and *Lea F. Alvo, Esq.*, for the General Counsel.

Dale Silver, Esq., of Cherry Hill, New Jersey, for the Respondents.

Gail Lopez-Henriquez, Esq. (Freedman & Lorry), of Philadelphia, Pennsylvania, for the Charging Party.

DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. The sole issue remaining in this proceeding is whether the employees at the Alzheimer Pavilion of Cherry Hills, which was built on and added to the premises of Silver Court Nursing Center, Inc. (Nursing Center), should be accreted to the bargaining unit at the Nursing Center represented by the Charging Party District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO (Union).[1] Respondents deny that they had any obligation to bargain with the Union about the Pavilion, because, among other reasons, the same people did not engage in day-to-day supervision of all the facilities and there was only minimal employee interchange.[2] To the contrary, the complaint alleges that Respondents violated Section 8(a)(5) and (1) of the National Labor Relations Act, 29 U.S.C. § 151 et seq.

The Nursing Center, a New Jersey corporation located in Cherry Hill, New Jersey, is a nursing care facility for 135 long-term elderly patients. It occupies one building, attached to which is a Residential Center, which offers care for up to 60 senior citizens who are able to do more for themselves

[1] The other unfair labor practices alleged in the three consolidated complaints were settled by a formal settlement approved by the National Labor Relations Board [DS-2237 (January 21, 1993)] and an informal settlement agreed to by the Regional Director with Health Care Services Group, Inc. (Health Care) and the Union.

[2] The relevant docket entries are as follows: The Union filed its unfair labor practice charges in Cases 4–CA–19613, 4–CA–19724, 4–CA–19752, 4–CA–19809, 4–CA–19838, and 4–CA–20372 on March 4 (amended on April 1), April 19, May 1 and 23, June 7, 1991 (which was amended on July 17, 1991), and January 14, 1992, respectively. The Union filed its unfair labor practice charges in Cases 4–CA–20470, 4–CA–20486, 4–CA–20519, 4–CA–20541, and 4–CA–20603 on February 18 and 24, March 4 and 10, and April 1, 1992, respectively. Complaints issued on August 30, 1991, February 3, and May 29, 1992 (amended on June 3), and all the Cases were consolidated. After the settlements, only a few paragraphs of the complaint relating to Case 4–CA–20470 remain. The hearing was held in Philadelphia, Pennsylvania, on September 14 to 16, 1992.

than the clients who reside in the Nursing Center. The Pavilion, owned by FDS, Inc., another corporation, is the newest of the facilities, having opened in February 1992. It cares for up to 40 patients who have Alzheimer's disease. Silver Care Management, Inc. (SCM), a corporation, is the management company that supervises, manages, and operates all the facilities. It receives the payments from all the residents of all the facilities. Under two management contracts, SCM purchases assets, pays the bills, puts money into separate payroll accounts for the various entities, pays the payroll and taxes, and allocates all income and expenses to the Nursing Center and FDS, reserving to itself the management fees earned for its services. Dale Silver is SCM's sole shareholder, officer (president), and director. However, her husband, Marc, is its chief executive officer and runs the entire operation, with his wife's advice and consent. Marc works at SCM's office, which is about equidistant from the Pavilion and the Nursing Center and is located off a 100-foot long convenience corridor that connects both buildings.

Jurisdiction is conceded. Respondents admit that Health Care, a Pennsylvania corporation with offices in Huntingdon Valley, Pennsylvania, is engaged in providing housekeeping and laundry services on a contract basis to nursing homes, including the Nursing Center. Respondents also admit that, as an alternative to litigating whether they are involved in commerce, that during the year ending January 1, 1992, they collectively derived gross revenues in excess of $1 million and purchased and received goods valued in excess of $5000 directly from points outside New Jersey. I conclude, as Respondents admit, that they are employers within the meaning of Section 2(2), (6), and (7) of the Act and health care institutions within the meaning of Section 2(14) of the Act.

Respondents' admission does not set forth the accurate relationship of the Respondents. Rather, the complaint alleges, and I conclude, that the Nursing Center, SCM, and FDS constitute a single employer within the meaning of the Act. As a single employer, they also meet the Board's standards for asserting jurisdiction. In *NLRB v. Browning Ferris Industries*, 691 F.2d 1117, 1122 (3d Cir. 1988), the court stated:

> A ''single employer'' relationship exists where two nominally separate entities are actually part of a single integrated enterprise so that, for all purposes, there is in fact only a ''single employer.'' The question in the ''single employer'' situation, then, is whether the two nominally independent enterprises, in reality, constitute only one integrated enterprise. . . .
>
> In answering questions of this type, the Board considers the four factors approved by the *Radio Union [v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255 (1965)] court, at 256: (1) functional integration of operations; (2) centralized control of labor relations; (3) common management, and (4) common ownership. Thus, the ''single employer'' standard is relevant to the determination that ''separate corporations are not what they appear to be, that in truth they are but divisions or departments of a single enterprise.'' . . . ''Single employer'' status ultimately depends on all the circumstances of the case and is characterized as an absence of an ''arm's length relationship found among unintegrated companies.'' [Citations omitted; emphasis in original.]

None of these factors are controlling, nor are all needed to be present in order to support a single employer finding. The first three criteria are more important to a finding of single employer status than the last; and the Board puts particular emphasis on the factor of centralized labor relations as that tends to show ''operational integration.'' *Hydrolines, Inc.*, 305 NLRB 416, 417 (1991), citing *NLRB v. Al Bryant, Inc.*, 711 F.2d 543, 551 (3d Cir. 1983).

Respondents constitute a family operation. The Nursing Center is owned by the Silver Rudolph trust, the trustees of which are Marc and his sister and mother. The beneficiaries are Marc, his children from a previous marriage, and his sister and her son. FDS is wholly owned by Dale, Marc's second wife. Although she is the current president of FDS, Marc was its president in December 1991 when FDS filed a certificate registering the Pavilion as a fictitious or alternate name which FDS intended to use in the conduct of its business as a ''[n]ursing home and related business and activity.'' In documents filed with the New Jersey Department of State, Marc is named as the registered agent for both FDS and the Nursing Center.

Mark is the president and administrator of the Nursing Center; Dale is the administrator of the Pavilion. Marc's testimony, and Marc was the only person to testify on behalf of Respondents, thus showing his complete knowledge of all areas of Respondents' operations, was that estate planning caused him to separate the Pavilion from the Nursing Center because, otherwise, if he were to die, a portion of the Pavilion would revert to his first family. With the ownership of the Pavilion in FDS, his second family (Dale) would inherit his estate. Marc signed both of SCM's management contracts on behalf of SCM. His sister signed for the Nursing Center and Dale for FDS; but Dale was the attorney who prepared both contracts. They are almost identical, obviously not arm's length transactions but ones between husband and wife and brother and sister. From Marc's knowledge of all the entities, and his admission that he makes many of the key decisions regarding their operation, as well as his background as a developer of nursing homes during the 1980's, I find that he (with Dale's participation and approval of Dale) controls the Nursing Center, FDS, and SCM. The Board has found single-employer status despite separate ownership based on a single individual's control over management, labor relations, and finances of both businesses. *Hydrolines, Inc.*, supra at 419; *Mr. Clean of Nevada, Inc.*, 288 NLRB 895 (1988); *Il Progresso Italo Americano Publishing Co.*, 299 NLRB 270 (1990). While there is no common ownership between the Nursing Center and FDS or SCM, all the entities are owned by related family members and are under Marc's control. I conclude that there is ample evidence of common ownership and financial control, as required by the Board's test.

However, as noted above, this conclusion is the least important indication of a single employer status. All the other indicia are present. The Nursing Center, FDS, and SCM are highly interrelated. The Nursing Center (encompassing the Pavilion, FDS and SCM) holds itself out to the public as one enterprise. *Thornton Heating Service*, 294 NLRB 304, 309 (1989). The buildings are located on the same plot of land,[3] which is owned by the Nursing Center; and they are all connected. The three facilities share common parking lots. On

[3] All the yard work is done by the same subcontractor.

the property, there is only one sign, with the name of the Nursing Center on top and much more prominent and in larger print than the printing underneath it:

SILVER CARE NURSING CENTER
NURSING CARE
RESIDENTIAL CENTER
ALZHEIMER PAVILION

Marc advertises Respondents as a skilled nursing home and a residential care facility. At least as of the time of the hearing, Marc did not specifically mention their specialized care for Alzheimer's patients. Rather, in the 7 years that Marc has been involved, it was not uncommon for the Nursing Center to represent that it gave care to Alzheimer's patients, because half of its patients were Alzheimer's patients. Although Respondents do not share common addresses, all administrative functions are combined in SCM's offices, and all mail is delivered there. There is one telephone number for the Nursing Center, and for no one else. There is one telephone listing. A person calling about the Pavilion's business must telephone the Nursing Center, and the telephone call is answered by a receptionist employed by SCM. An SCM employee maintains all medical records for all the facilities in SCM's office and assures that the quality of service of all of them complies with the legal requirements for care of patients in a nursing home. Another employee handles all admissions. As noted above, SCM handles all the financial transaction for all the entities.

The New Jersey Department of Health, Division of Health Facilities Evaluation, issued only one license—to the Nursing Center, for the entire facility, covering all the beds of the Nursing and Residential Centers and the Pavilion. Without the Nursing Center's license, FDS would not be able to operate the Pavilion, because the Pavilion does not have its own license. FDS would also be unable to operate the Pavilion because it was constructed without a kitchen. Marc contemplated that it would be cheaper to run the facility using the kitchen (and the kitchen staff) of the Nursing Center. The Pavilion also has no laundry, and SCM entered into a laundry contract with Health Care for both the Nursing Center and the Pavilion. I conclude that there is ample evidence of the interrelation of operations.[4]

Furthermore, because SCM manages the Nursing Center and the Pavilion, as shown above, the Nursing Center, FDS, and SCM share common management. Under the management contracts, SCM had to furnish both facilities with administrators and managers. Marc and Dale, for SCM, named Helene Loeb, a ''high executive'' of SCM who worked as the assistant administrator of the Nursing Center until FDS opened,[5] as the facility director of FDS. Similarly, they named Linda Schaeffer, another ''high executive'' of SCM, the assistant administrator of the Nursing Center. She assists Marc in SCM's operations and signs the payroll checks for all employees, including those of the Pavilion. John Fratentoro, SCM's financial controller, handles the financial matters for all three entities. Nancy Dawson, SCM's office manager, handles the business office functions for both the Nursing Center and the Pavilion.

Finally, I conclude that there is centralized control of labor relations. Marc set the hiring and labor policies for both the Nursing Center and FDS. Although he did not personally hire or fire employees, he testified that he determines (with Loeb) what qualifications FDS was going to require of applicants for employment at the Pavilion and, by himself, what qualifications the Nursing Center required of its employees. Marc is solely responsible for negotiating with the Union a collective-bargaining agreement for the Nursing Center that deals not only with wages and benefits but also disciplinary policies. Marc, with Loeb, determined the disciplinary policies that FDS will use and, at the time of the hearing, was still preparing those guidelines. In addition, when the Union made its demand for recognition as the representative of the employees of the Pavilion, as an accretion, it was Marc, and no one else, who bargained with the Union about whether the current agreement should apply to the Pavilion's employees and ultimately refused to recognize the Union.

I conclude that the Nursing Center, FDS, and SCM are affiliated enterprises and constitute a single integrated enterprise and single employer within the meaning of the Act.

Turning to the accretion issue, the Nursing Center is the successor to Heritage House, Inc., which had recognized the Union as the representative of its employees. The Nursing Center has a current collective-bargaining agreement (the agreement expires on December 5, 1993) with the Union in which it recognized the Union as the exclusive representative of the following employees:

> All LPN's, LGPN's, rehabilitation therapy nurses, nursing aides, nursing assistants, senior nursing aides, ward clerks, activity aides, nursing aide/clothing attendants, rehabilitation therapy aides, housekeepers, laundry aides, floor care/porters, porters, general kitchen workers, dietary aides, senior dietary aides, cook trainees, cooks, chefs, dish room workers, office clerical, maintenance persons, drivers, unit charge nurses, medical records transcribers, yardworker/groundskeeper, bath team aides, but excluding guards and supervisors as defined in the Act.

The Board has stated that it will be restrictive in finding accretion because it forecloses the employees' right to select their bargaining representative. *Towne Ford Sales*, 270 NLRB 311 (1984), enfd. 759 F.2d 1477 (9th Cir. 1985), cited with approval in *GHR Energy Corp.*, 294 NLRB 1011, 1016 (1989). In *Gould, Inc.*, 263 NLRB 442, 445 (1982), the

[4] In doing so, I have specifically considered the following facts, which, I find, are overwhelmed by other facts showing interrelation of operations: Access to the facilities is different. The entrances to the Pavilion are locked so that residents cannot leave. Residents wear special bracelets that automatically lock certain doors. The Pavilion is self-contained, that is, it does not rely on much of the equipment of the Nursing Center, but has its own emergency generator, fire alarm system, sprinkler system, boiler system, electrical room, and mechanical room. The boiler for the Pavilion is in the mechanical room which is located just outside the Pavilion under the convenience corridor. The Pavilion also has its own patient care rooms, activity rooms, dining rooms, beauty shops, family rooms, examination rooms, nursing stations, nurses' lounge, staff room, tub rooms, utility rooms, nursing supply rooms, medication rooms, and special dining rooms.

[5] Loeb was also either the director or assistant director of nursing at the Nursing Center.

Board provided the following guidance for determining when an accretion occurs:

> An accretion, as the term has been employed by the Board and the courts, is merely the addition of new employees to an already existing group or unit of employees. In determining whether a new facility or operation is an accretion, the Board has given weight to a variety of factors including integration of operations, centralization of managerial and administrative control, geographic proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history, and interchange of employees. In the normal situation some elements militate toward and some against accretion, so that a balancing of them is necessary. Where the new employees are found to have common interests with members of an existing bargaining unit and would have been included in the certified unit or covered by the current collective-bargaining agreement an accretion is found to exist. However, where a group of new employees numerically overshadows the existing certified unit and may constitute a separate or independent appropriate unit, the Board is ''cautious'' to find that the new employees are part of the existing unit since such a finding would deprive the larger group's employees of their statutory right to select their own bargaining representative. In such cases the Board must balance the right of employees to select a bargaining agent against the concomitant statutory objective of maintaining established stable labor relations.

Some of these factors are virtually identical to those considered above, regarding the determination of single employer status. My findings are equally applicable to the accretion issue. For example, the centralization of managerial and administrative control is manifestly evident. Both the Nursing Center and the Pavilion gave that responsibility to SCM, which exercises full control. The geographic proximity of the Pavilion to the other buildings is equally clear. The two buildings are no more than 100 feet apart and are connected by an enclosed corridor. The Nursing Center's building, which houses most of the long-term nursing patients is attached to the Residential Center, which offers care for up to 60 senior citizens who are able to do more for themselves than the clients found in the Nursing Center. The operations are also integrated, as evidenced by the sign in the front of the facility. One license to operate covers them all, and they share, because of the identical management contracts, the same office, receptionist, telephone, and office personnel. The Pavilion cannot operate without the kitchen of the Nursing Center and its staff. Otherwise, there would be no food for its clients, because only the Nursing Center has a kitchen and a staff to prepare and deliver food and to wash dishes. The Pavilion also has no laundry. The Nursing Center's housekeepers pick up laundry from the Pavilion and return clean laundry. Similarly, when the Nursing Center has run out of clean linens, which sometimes occurs two or three times a week, employees of the Pavilion go to the Nursing Center to pick up linens. Otherwise, the Pavilion operates separately from the Centers. In addition, the size of the existing unit (about 100 employees at the Nursing Center, excluding 15 housekeepers employed by Health Care) far outnumbers the employees to be accreted (about 45 employees in the Pavilion).

Marc exercises complete control over labor relations of both facilities, at least in the broad sense. It was he that bargained with the Union for the present collective-bargaining agreement and dealt with the Union in attempting to resolve the instant dispute.[6] He establishes the policies for hiring, although he does not personally hire employees. The collective-bargaining history also favors a finding of accretion. The Residential Center occupies the oldest building on the land. When the building that the Nursing Center presently occupies was completed in 1987, the old building was designated for the Residential Center. Marc treated the Nursing Center and Residential Center as one entity and recognized the Union for the employees who worked there. On the other hand, there may have been valid reason to treat them as one entity. Among other considerations, residents of both the Residential Center and Nursing Center have parties together, employees use the same entrances, and families of residents of either facility can enter through the Nursing Center or Residential Center. In addition, the collective-bargaining agreement also applied to the housekeeping and laundry employees who are employed by Health Care, to whom the Nursing Center subcontracted its housekeeping and laundry services.[7] The employees of Health Care, which by stipulation was agreed to constitute, with the Nursing Center, a single employer, are represented by the Union. The employees at the Pavilion are the only employees on the land who are not covered by the Union's collective-bargaining agreement. In addition, when faced with the Union's demand to consider the Pavilion as an accretion, Marc initially agreed to do so, provided that the Union agreed to certain changes in the agreement, particularly the provisions that pertained to the right of employees at the Nursing Center to be promoted or transferred to positions at the Pavilion.

The working conditions of the employees are different because Respondents comply with the collective-bargaining agreement at the Nursing and Residential Centers, but Marc has set the employees' terms and conditions of employment unilaterally at the Pavilion. The wage structure at the Pavilion is generally higher, and health plan coverage is different. The Nursing Center's employees receive more vacation and one more holiday, but both groups receive the same number of sick days, albeit that the policies of the two facilities for obtaining sick pay differ. Employees of the Pavilion have the option to waive their fringe benefits and receive higher wages; the Nursing Center's employees have no such option.[8] However, the skills and functions of the employees are

[6] Marc met with a union representative in April, May, and June, seeking to renegotiate the collective-bargaining agreement. He particularly objected to the Union's desire to permit transfers of nurses aides from the Nursing Center to the Pavilion. This will be dealt with below.

[7] The collective-bargaining agreement provided that Silver Court retained the right to subcontract unit work, provided that the contract with the subcontractor stipulated that it will retain all incumbent employees, abide by the agreement, and recognize the Union.

[8] Contrary to the General Counsel's contentions, I consider unimportant the similarity or identity of various documents given to employees of both facilities. The documents do not constitute terms and conditions of employment.

very similar. Marc testified in excruciating detail about duties of the licensed practical nurses, housekeepers, activities personnel, and maintenance employees. In sum, what most of the employees in the various classifications do at one facility, they do at the other. The primary differences in employees' functions are caused more by the population of residents than by the skills needed by the employees themselves. Thus, Alzheimer's patients have little idea of reality and tend to wander. According to Marc, they may easily be traumatized by surprises, such as loud voices or touching them from the rear. They may urinate at any time and at any place. Employees must know not to alarm them unduly and must be able to treat them with dignity and with care. Because of these general characteristics, all of the employees have some sort of training in how to deal with these patients. Even the housekeepers may have contact with a wandering patient and may have to help in the care of that patient from time to time.

The principal dispute centers on the duties, functions, and qualifications of the Nursing Center's nurses aides and the Pavilion's caring companions.[9] All these employees take care of the daily needs of the residents. They get the patients up in the morning, help dress and feed and bathe them, and provide hands-on care. The caring companions, according to Marc, help in the assessment and are part of the unit disciplinary care team. They provide activities and do a portion of the housekeeping. Upon analysis, the caring companions do work hardly different from the nurses aides. Indeed, the State of New Jersey has taken the position, much to the distress of Marc, who is fighting it, that caring companions must be certified as nurses aides, as state law requires of nurses aides. Indeed, the Nursing Center has provided a program from time to time for its nurses aides to become certified;[10] and the Pavilion has provided one program, too.

In any event, the duties of the aides and companions hardly differ, as is evident from the job descriptions of both categories. Even Marc became confused as to which was which. The job description of the nurses aides, introduced in evidence by the General Counsel, was partially illegible, so I asked Marc certain questions to ensure that the record would fairly reflect the contents of the description. When he arrived at the item that read: ''Reality orientation, restorative and remotivation of patient,'' Marc commenced a detailed explanation about this ''specialized program'' that he described:

> THE WITNESS: It's a special care unit. It does special things with patients that are not done in any other nursing home in the country, and these are specially trained people who do special programs; it's a special kind of program.
>
> JUDGE SCHLESINGER: What is a reality orientation?
>
> THE WITNESS: It—it is a program given to patients to help, dementia patients, remember, and actually behavior modify these patients, give them behavior modification . . . It's a special program which is implemented in the Alzheimer Pavilion to help them with behavior modification.

The only problem with this testimony is that Marc was testifying about the job description of the nurses aides, not the caring companions. His confusion evidences that there really was no difference. The functions of both classifications, even as to the alleged areas of expertise required in dealing with Alzheimer's patients, are almost identical. That was corroborated by Regina Washington,[11] who worked as a caring companion beginning in April for almost 4 months. The Pavilion gave her no special training, except for a 3-day orientation in which she was taught how to make beds, where the clean linens were, where to put the soiled linens, where the patients were to eat, and how the tables were to be set for meals. The Pavilion also gave her a pamphlet on Alzheimer's disease and later held in-service meetings about the duties of caring companions. (Marc testified that caring companions are taught how to greet and approach middle stage Alzheimer patients because the wrong way would cause angry, often hysterical reactions.)

After Washington's employment at the Pavilion, she worked as a temporary nurses aide at the Nursing Center. She testified that her functions were very much the same. When asked what differences she noted in the care of her patients, she answered that residents were not restrained at the Pavilion. Otherwise:

> Not very much difference. I took just as good care of the people in the nursing home as I did in the Alzheimer's unit, except a lot of the Alzheimer's patients have to be constantly watched, because they wander and they get confused, and you're most of the time when you work in the nursing home you're assigned more patients than you would be if you were working on the Alzheimer's unit.
>
> So it makes you [sic] easier for you to watch them or keep up with them. . . . And in the nurses [sic] center a lot of the patients could be more bedridden. They're not mobile. They can't move around as much. They're more bedridden patients maybe.

The qualifications for the two positions are slightly different. The Pavilion wanted applicants to have a high school education and preferred that they had at least 1 year of college. It also wanted them to have no prior experience with nursing homes. That apparently was not as important as Marc insisted, because the Pavilion hired Washington, who had 15 years of nursing experience.[12] On the other hand, the Nursing Center only preferred that its nurses aides have completed high school and that they have certifications. These differences are not important enough, however, to distinguish their actual functions. Even persons without a high school education have deductive reasoning, which Marc defined as an understanding that ''A plus B'' equaled ''C,'' and sounded more like common sense, that he insisted was the prime qualification for the job of caring companion. Nurses aides, even without a high school education, have the ability to read and write (Marc wanted his caring companions to write memoranda outlining certain behavior and the steps taken to

[9] There is no classification of ''caring companion'' at the Nursing Center, but there are 7–10 ''personal care companions'' at the Residential Center.

[10] When a nurses aide is hired and does not possess a certification, the aide is given 4 months to obtain one.

[11] Respondents' attack on Washington's credibility was unfounded. I found her quite credible. She had nothing to gain by testifying as she did.

[12] Loeb promised Washington that the Pavilion would offer a course for the state certification of nurses aides.

prevent the conduct from reoccurring), and I discredit his testimony that all his employees at the Nursing Center lacked intellect and motivation and were unable to communicate at anything more than a sixth to ninth grade level.

I also find substantial similarities between the LPNs employed at both facilities, despite Marc's attempt to differentiate between them. He testified that the LPNs have authority over more job classifications at the Pavilion than at the Nursing Center. Apparently, a particular registered nurse assists in the admission, transfer, and discharge of patients in the Pavilion, but the LPNs do most of the admission work at the Nursing Center. Furthermore, the specific registered nurse at the Pavilion maintains the current nursing care plan, whereas the LPNs do this at the Nursing Center. Nonetheless, in all other respects, they engage in the same traditional care that one would find in any facility, and they would be equally at home in both the Pavilion and the Nursing Center. Marc claimed that the LPNs at the Pavilion had the right to hire and fire. If so, they would be excluded from the unit because they are supervisors. However, I do not credit him, because he testified that Loeb was the one who hired and fired employees; and I find it unlikely that he would have ceded that power to the LPNs. Inasmuch as the job description that he relied on included registered nurses, who are not represented by the Union, I find it more likely that it is the registered nurses who have supervisory functions.

The other employees have equally similar functions. The laundry employees are identical. All laundry (clothing, sheets, towels, etc.) is cleaned on the premises of the Nursing Center by employees of Health Care. The housekeeping staff (including floor men who wash the floors and do the heavy-duty cleaning) essentially clean the facilities. The maintenance personnel do minor maintenance at both facilities and have the same skills. It may be that, from time to time, the employees at the Pavilion may be called on to help the residents of the Pavilion; but I believe that their principal functions were indicated by their job positions. To be helpful or kind to those who suffer from Alzheimer's disease requires no specialized training by housekeepers of maintenance persons. I am convinced, however, that Marc exaggerated when he testified that the housekeepers help in the feeding of patients, and they participate in the daily living activities, whenever they are ''not cleaning or whatever.'' Cleaning was their principal job, not a secondary one.

In so finding, I consider that much of Marc's testimony was overstated and unworthy of belief. He tried so hard to impress me with the alleged uniqueness of the Pavilion that he was willing to say almost anything to protect it from becoming unionized. Marc constantly argued for his position rather than testifying about the facts. He attempted to distance himself from the operation of the Pavilion, falsely, I find, because he was the only witness for Respondents, evidencing his knowledge of all of Respondents' functions. He insisted that he had no authority to bargain for the Pavilion and that only Dale did, yet he testified that he consulted with the union representative who made the accretion demand. In many cases, his response was prompted by Dale, who acted as Respondents' attorney and obviously had much to gain, because of her ownership and operating interests in all the entities, as well as her relationship with her husband. Dale would, as an attorney, object, the objection would invariably be overruled, and Marc would then, as a witness, interject his own objection, usually following the suggestion made by his wife. Sometimes, the two would both interpose objections or agree with one another. Once, Dale blatantly suggested an answer to Marc.

Respondents contend that, even if I found many of the factors that the Board has considered relevant in determining whether a new operation is an accretion, under *Towne Ford*, supra, 270 NLRB 311, the Board will not find an accretion unless there is a substantial degree of interchange of employees between the affiliated companies and there is the same day-to-day supervision of the employees in the group sought to be included. In *Towne Ford*, there were common offices, common ownership, and common management at the policymaking level. The two groups of employees utilized the same job skills and utilized similar tools and equipment. Nonetheless, the lack of the same supervision and interchange of employees caused the Board to conclude that there was no accretion. Similarly, in *Gitano Distribution Center*, 308 NLRB 1172 (1992), the Board relied on *Towne Ford's* identification of employee interchange and common day-to-day supervision as ''especially important in a finding of accretion.'' *Towne Ford*, supra at 311–312. The Board held only that these were ''important,'' not that they constituted the sine qua non for a finding of an accretion; but it is accurate that no party has cited a recent decision in which the Board excused the lack of these two factors and found an accretion. Even in *Meyer's Cafe & Konditorei*, 282 NLRB 1 (1986), a decision heavily relied on by the General Counsel, the Board found that accretion was warranted because there was common supervision of all the employees and there was evidence of interchange of employees. To the extent that there was not more interchange, that was caused by the Employer's illegal recognition of another union that prevented the interchange.

Here, there is just slight evidence of common supervision of the employees. The director of maintenance employed by the Nursing Center helps at the Pavilion whenever he is needed; but he supervises the work of the maintenance employees employed at both the Nursing Center and the Pavilion. That involves only several employees. Otherwise, like *Gitano*, where there was a fence that separated the new operation from the remainder that had been covered under the union contract, the Pavilion was mainly sealed off from the rest of the facility. The patients there were attended by their own staff that was supervised by separate supervisors. Patricia Domanski is the director of nursing at the Nursing Center and supervises the nursing staff there. She schedules the work of the nurses aides and interviews and them. Loeb is the facility director of the Pavilion. She supervises the staff and hires, fires, supervises, and disciplines employees at the Pavilion. Loeb has nothing to do with the Nursing Center; Domanski has nothing to do with the Pavilion.

Towne Ford instructs that, even when someone sets all the labor policies for both entities, that is not enough to constitute day-to-day supervision. The General Counsel uses the same argument—Marc had ''overall supervision of all employees and centralized control of all labor relations policies'' that was rejected in *Towne Ford*. I similarly reject it. As the Board noted in *Towne Ford*, supra at 312, what is particularly significant is the perception of the employees in the two entities, because ''the day-to-day problems and concerns among the employees at one location may not necessarily be shared by employees who are separately super-

vised at another location.'' *Renzetti's Market*, 238 NLRB 174, 175 (1978). So the fact that Schaeffer and Loeb report to Marc at managers' meetings is of no significance.

Finally, there has been no interchange of employees. No one employed by the Pavilion has transferred to the Nursing Center, and vice versa. However, some of the employees have performed functions at the other facility. As found above, the Pavilion does not have its own kitchen. The food for the residents and patients is prepared on the premises of the Nursing Center by general kitchen workers, dietary aides, and cooks, all of whom are covered under the Union's collective-bargaining unit. The dietitian is the same for all the facilities. All the dishes are washed by employees of the Nursing Center covered by the same contract. Daily, for breakfast, lunch, dinner, and three snacks, dietary aides employed by the Nursing Center wheel food on carts from the Nursing Center's kitchen through the convenience corridor to the Pavilion and into its dining room. At the end of the meal hour, the dietary aides would come back to the Pavilion to pick up the dirty dishes, which would be washed in the kitchen of the Nursing Center. Furthermore, when the Pavilion has run out of clean linen, sometimes as often as two or three times a week (but sometimes there was a sufficient supply during the entire week), two caring companions would be assigned to go to the Nursing Center to pick up clean linen. Other than the delivery of food and the pickup of dirty dishes, which is done daily, and the much more sporadic pickup of clean linen, employees do not leave their respective facilities. And the record is devoid of any evidence that, even when employees of one facility went to the other, they had actual contact with any employees there. Rather, the employees of the Pavilion work in a primarily self-contained facility. There are separate entrances and separate employee lounges and restrooms. The caring companions, who wear name tags indicating that they are employed by the Pavilion, wear their normal every day clothing, whereas nurses aides wear uniforms.

I conclude that there was no interchange, and the record cannot sustain even a finding of a minimal contact among a few employees.[13] The General Counsel contends, however, that there would have been substantial interchanges had it not been for Marc's bias and prejudice. During Marc's negotiations with the Union regarding its demand for recognition at the Pavilion, Marc stated his unwillingness to adopt the Union contract because that might lead to the eligibility of the nurses aides to transfer from the Nursing Center. Marc did not desire the ''Camden type'' of employee at the Pavilion, a reference to the nearby New Jersey city, which has a substantial black and Spanish-speaking population. Marc testified that he was referring to the amount of education that a Camden resident received. Even assuming that this remark meant that Marc did not want minorities working at the Pavilion,[14] a meaning that Marc vehemently denied, the statement is not relevant. It might have applied if Marc were bound by the Union's contract, to the extent that he refused to transfer nurses aides to the Pavilion because of their color or ethnic origin. However, there is no showing that there was any duty to transfer aides or that Marc would have transferred them, had it not been for their color or ethnic origin. Thus, unlike *Meyer's Cafe & Konditorei*, supra, 282 NLRB 1, there has been no showing that Marc's violation of the Act prevented the interchange.

Because the General Counsel has failed to prove that the employees at both the Pavilion and the Nursing Center had the same day-to-day supervision or that there was a meaningful interchange of employees, I conclude that the Pavilion's employees should not be accreted to the unit of the Nursing Center's employees represented by the Union.

On these findings of fact and conclusions of law and the entire record in this proceeding,[15] including my observation of the demeanor of the witnesses as they testified, and my consideration of the briefs filed by the General Counsel, Respondents, and the Union, I issue the following recommended[16]

ORDER

The complaint is dismissed.

[13] Hahnemann University, Decision, Order, and Clarification of Bargaining Units in Cases 4–UC–228, 229, and 230, is an unreported decision of the Regional Director for Region 4. It is relied on by the General Counsel because there was no common supervision there, yet an accretion was found. However, there was complete contact of the employees sought to be accreted with all the other employees in the unit on a daily basis. Furthermore, the Regional Director did not discuss the effect of *Towne House* and its progeny. Finally, the decision was never reviewed by the Board.

[14] Washington was the only minority caring companion. Only 25 percent of the nurses aides were white.

[15] The General Counsel's unopposed motion to correct the official transcript in numerous respects is granted, and the transcript is amended accordingly.

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.